



STAFF REPORT

Approving a Permanent Encroachment Agreement for Construction of Retaining Walls and Stairs within the Public Right-of-Way at 1627 Notre Dame Avenue

Honorable Mayor and City Council:

Summary

The property owner at 1627 Notre Dame Avenue wishes to obtain a Permanent Encroachment Permit to construct retaining walls and stairs within the public right-of-way. The work proposed under the permit will reduce existing grade, improve slope stability, reduce slope erosion in the roadway and provide pathway access to the front entrance of the residence. A resolution is provided for consideration approving the encroachment as recommended, with conditions.

Background and Discussion

The property owner of 1627 Notre Dame Avenue has applied for a Permanent Encroachment Agreement to construct retaining walls and stairs within the public right-of-way. The proposed retaining walls will replace an old 3-foot high, 20-foot long retaining wall. The existing wall was in a state of disrepair. It was shedding debris into the street, which was potentially hazardous to passing vehicles and interfered with street drainage. The new mortared rock retaining walls will encroach approximately ten feet into the public right-of-way. The height of these retaining walls will vary from 1 foot to 3 feet. A set of concrete stairs with flagstones is also proposed to be constructed with the bottom eight steps encroaching approximately 9 feet into the public right-of-way. This concrete staircase will provide the residents access to the front entrance of their home.

The Belmont Municipal Code, Chapter 22, Article 1, describes the process and requirements for obtaining approval to encroach upon the public right-of-way. Section 22-6(1) defines the City Council as the sole authority allowed to issue written permits for major encroachments including retaining walls within the public right-of-way. Section 22-7(C) requires the Director of Public Works to review all major encroachment applications and if he finds the application in

accordance with the code, recommend its approval with such conditions he deems necessary to protect the health and safety of the public and protect the City.

The City Council may choose to approve or to conditionally approve the application if it finds that there is some public benefit the encroachment. Section 22-7(C)(1) provides examples of acceptable public benefit, which are included but not limited to the following:

1. A retaining wall that allows added on-street parking, sidewalk, or safer sight distance.
2. Retaining walls that reduce the amount of grading.
3. Encroachments that replace or improve an existing undesirable physical condition.

The City Staff has reviewed the encroachment application for the 1627 Notre Dame Avenue retaining wall and found it to be in compliance with the City Code. The public right-of-way extends approximately 17 feet beyond the edge of street pavement. There is an 8-foot wide sidewalk located in front of the property. The proposed retaining walls and stairs will be located at the back of the existing sidewalk.

City Staff believes that the wall will fulfill the obligation to provide the required public benefit. The public benefit is that it will improve an existing undesirable physical condition. The new retaining walls are an improvement over the existing wall and will improve slope stability and prevent erosion of soil into the existing sidewalk, roadway and storm drainage system.

As a result, City Staff recommends allowing the construction of the mortared rock retaining walls and concrete with flagstone stairs within the public right-of-way at 1627 Notre Dame Avenue and recommends City Council approve the resolution with the following conditions of approval:

- 1) The retaining walls and stairs shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- 2) The retaining walls shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design"; and,
- 3) The property owner shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- 4) The City of Belmont shall have no obligation whatsoever to accept or maintain said improvements, and the owner shall pay a license fee of \$100.00 each 5 years that the encroachment remains in the public right-of-way.
- 5) The property owner shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,
- 6) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and,
- 7) The applicant shall obtain a renewable license for the use of public right-of-way within 30 days of receiving such notice to license.

On March 26, 2004, letters were mailed to residents within a 300-foot radius of the neighborhood. No comments were received as of April 1, 2004.

Fiscal Impact

There is no fiscal impact to the City. All costs are property owner's responsibility.

Recommendation

It is recommended that the City Council adopt the attached resolution approving, with conditions of approval, a Permanent Encroachment Agreement for retaining walls and stairs within the public right-of-way at 1627 Notre Dame Avenue.

Alternatives

1. Reject the application
2. Continue to the next Council meeting

Attachments

1. Resolution
2. Exhibit A

Respectfully submitted,

Bozhena Palatnik, E.I.T.
Engineering Technician

Raymond E. Davis, P.E. PTOE
Director of Public Works

Jere A. Kersnar
City Manager

RESOLUTION NO. ____

**CITY OF BELMONT
San Mateo County, California**

RESOLUTION OF THE CITY OF BELMONT APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR CONSTRUCTION OF RETAINING WALLS AND STAIRS, WITHIN THE PUBLIC RIGHT-OF-WAY AT 1627 NOTRE DAME AVENUE - APN 044-342-070

WHEREAS, the City of Belmont is authorized by Municipal Code Sec. 22-5 to issue encroachment permits for construction of structures in the public right-of-way; and,

WHEREAS, the property owner of 1627 Notre Dame Avenue has applied for a Permanent Encroachment Agreement; and,

WHEREAS, the Belmont City Council has made the following findings required by Municipal Code Sec. 22-6 for approval of a permanent encroachment agreement:

- (1) There is a public benefit to the encroachment as it will improve slope stability and prevent erosion of soil into the roadway and storm drainage system; and,
- (2) The encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
- (3) The City will be duly protected from liability for injury to persons and property; and,
- (4) The required bonds will guarantee the faithful performance of all conditions and requirements specified in the permit.

WHEREAS, approval of this permanent encroachment agreement is subject to the following conditions:

- (1) The retaining walls and stairs shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- (2) The retaining walls shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design"; and,
- (3) The property owner shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The City of Belmont shall have no obligation whatsoever to accept or maintain said improvements, and the owner shall pay a license fee of \$100.00 each (5) years that the encroachment remains in the public right-of-way.
- (5) The property owner shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,

- (6) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and,
- (7) The applicant shall obtain a renewable license for the use of public right-of-way within 30 days of receiving such notice to license.

WHEREAS, the structures built in connection with this agreement shall be constructed in accordance with City standards and with the benefit of a Construction Inspection Permit to provide for inspection of said construction, issuance of which is hereby conditionally approved, subject to the payment of inspection fees and posting of required surety to the Department of Public Works.

NOW, THEREFORE, IT IS HEREBY RESOLVED that:

- (1) The Belmont City Council finds the Permanent Encroachment Agreements in compliance with the City code; and,
- (2) The Belmont City Council approves the Permanent Encroachment Agreement with John Holm, his heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the mortared rock retaining wall and concrete with flagstone stairs located within the public right-of-way at 1627 Notre Dame Avenue as described above and as shown on the attached exhibits and its continuing maintenance by the property owner; and,
- (3) The Belmont City Council authorizes the City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) The Belmont City Council authorizes the City Clerk to file said Agreement with the County Recorder.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on this 13th day of April, 2004.

AYES, COUNCILMEMBER(S): _____

NOES, COUNCILMEMBER(S): _____

ABSTAIN, COUNCILMEMBER(S): _____

ABSENT, COUNCILMEMBER(S): _____

Clerk of the City of Belmont

APPROVED:

Mayor of the City of Belmont